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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/329,487	06/10/1999	MITCHEL KRISS	29284/35302	8147

7590 10/03/2005

SCHIFF, HARDIN & WAITE
Patent Department- 71st floor
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Chicago, IL 60606-6473

EXAMINER

NORMAN, MARC E

ART UNIT	PAPER NUMBER
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3744

DATE MAILED: 10/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/329,487

Applicant(s)

KRISS ET AL.

Examiner

Marc E. Norman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-49 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4,30,31,39-43,48 and 49 is/are rejected.
- 7) ☒ Claim(s) 5-29,32-38 and 44-47 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 June 1999 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

Applicant's arguments with respect to claims 1-4, 30, 31, 39-43, 48, and 49 have been considered but are moot in view of the new ground(s) of rejection based on newly found art. The Examiner apologizes for the repeated presentation of new art, however the newly found Klepacki reference provides an earlier disclosure by the present Assignee regarding reading panelist data from competitive suppliers which the Examiner believes is particularly relevant to Applicant's claimed invention.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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Claims 1-4, 30, 31, 39-43, 48, and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Klepacki in view of Yamamoto et al.

As per claims 1, 30, 39, and 43, Klepacki teaches reading panelist data (TEXT, line 9), regarding purchase from a supplier of interest (TEXT, lines 6-8) and from other suppliers (TEXT, lines 9-10, 25, 41-43), and determining relationships therebetween (other retailer shares of product sales (TEXT, line 25) is a share (i.e., a percentage of a total), and thus is related to the share of product sales of the supplier of interest). Klepacki does not discuss the concept of reading overall customer data regarding purchases from the supplier of interest to estimate the purchases made by the overall customers from the other suppliers. However, as previously discussed, this is simply a matter of linearly scaling up the data to the overall customer population. It is generally well known to take a sample and generalize, infer or extrapolate the response from the sample to the population as a whole. As has been discussed previously, Yamamoto teaches the basic concept of determining the purchases made by an overall customer population by scaling up data regarding purchases from a surveyed sample shop (value in parentheses at column 8, line 18) using a relationship between panelist data and overall customer data (ratio at column 8, lines 21-29). It would have been obvious to one of ordinary skill in the art at the time of the invention to apply such scaling up of the data collected by Klepacki for the purpose understanding the purchasing trends of the overall customer base. Motivation for applying such scaling up to the Klepacki reference comes from the fact that it is well known that businesses monitor their product mix and try to get their customers to buy more when they are in the store vs. what they buy from competitors (see discussion within Klepacki regarding product mix (TEXT, lines 28-38) and customer loyalty (TEXT, lines 44-49); see also again as a general

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reference on this topic “The where’s and why’s behind home and personal care purchases...”

Drug Store News, 1998). It is clearly in a business’s interest to know what it’s customers are purchasing from its competitors and, given the data collected by Klepacki, such determination is a simple and obvious calculation using well-established basic scaling techniques.

As per claims 2 and 31, Klepacki further teaches aggregating data according to category (e.g., types of products).

As per claim 3, Klepacki teaches the collected data being in terms of dollars spent.

As per claim 4, Klepacki teaches determining the share for the supplier and for competitors (TEXT, line 25).

As per claims 40-42, 48, and 49, these claims are rejected for similar reasons as have already been addressed above regarding claims 1, 30, 39, and 43.

Allowable Subject Matter

Claims 5-29, 32-38, and 44-47 are objected to as being dependent upon a rejected base claim, but would be allowable, for the reasons already set forth in previous Office Actions, if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc E. Norman whose telephone number is 571-272-4812. The examiner can normally be reached on Mon.-Fri., 8:30-5:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cheryl Tyler can be reached on 571-272-4834. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MN

A handwritten signature in black ink, appearing to read 'Marc Norman', with a stylized, cursive script.

**MARC NORMAN
PRIMARY EXAMINER**